

**THE ROSEN LAW FIRM, P.A.**

Phillip Kim, Esq.  
Laurence M. Rosen, Esq.  
275 Madison Avenue, 40<sup>th</sup> Floor  
New York, New York 10016  
Telephone: (212) 686-1060  
Fax: (212) 202-3827  
Email: philkim@rosenlegal.com  
Email: [lrosen@rosenlegal.com](mailto:lrosen@rosenlegal.com)

**WEHRLE LAW LLC**

J. Christopher Wehrle, Esq.  
2601 S. Hanley Rd.  
St. Louis, Missouri 63144  
Telephone: (314) 272-4113  
Fax: (314) 272-4107  
Email: [chris@wehrlelaw.com](mailto:chris@wehrlelaw.com)

*Counsel for Plaintiff*

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI**

KAMIL WILKINSON, Individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

FUTUREFUEL CORP., TOM MCKINLAY,  
and ROSE M. SPARKS,

Defendants.

**Case No:**

**CLASS ACTION COMPLAINT FOR  
VIOLATIONS OF THE FEDERAL  
SECURITIES LAWS**

**JURY TRIAL DEMANDED**

Plaintiff Kamil Wilkinson (“Plaintiff”), individually and on behalf of all other persons similarly situated, by Plaintiff’s undersigned attorneys, for Plaintiff’s complaint against Defendants (defined below), alleges the following based upon personal knowledge as to Plaintiff and Plaintiff’s own acts, and information and belief as to all other matters, based upon, among

other things, the investigation conducted by and through his attorneys, which included, among other things, a review of the Defendants' public documents, public filings, wire and press releases published by and regarding FutureFuel Corp. ("FutureFuel" or the "Company"), and information readily obtainable on the Internet. Plaintiff believes that substantial evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

### **NATURE OF THE ACTION**

1. This is a class action on behalf of persons or entities who purchased or otherwise acquired publicly traded FutureFuel securities between August 10, 2023 and May 10, 2024, inclusive (the "Class Period"). Plaintiff seeks to recover compensable damages caused by Defendant's violations of the federal securities laws under the Securities Exchange Act of 1934 (the "Exchange Act")

### **JURISDICTION AND VENUE**

2. The claims asserted herein arise under and pursuant to Sections 10(b) and 20(a) of the Exchange Act (15 U.S.C. §§ 78j(b) and 78t(a)) and Rule 10b-5 promulgated thereunder by the SEC (17 C.F.R. § 240.10b-5).

3. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331, and Section 27 of the Exchange Act (15 U.S.C. § 78aa).

4. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) and Section 27 of the Exchange Act (15 U.S.C. § 78aa(c)) as the alleged misstatements entered and the subsequent damages took place in this judicial district.

5. In connection with the acts, conduct and other wrongs alleged in this complaint, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce,

including but not limited to, the United States mails, interstate telephone communications and the facilities of the national securities exchange.

### **PARTIES**

6. Plaintiff, as set forth in the accompanying certification, incorporated by reference herein, purchased FutureFuel securities during the Class Period and was economically damaged thereby.

7. Defendant FutureFuel describes itself as “a Delaware corporation, and, through its wholly-owned subsidiary, FutureFuel Chemical Company, manufactures diversified chemical products, bio-based fuel products, and bio-based specialty chemical products.”

8. FutureFuel is incorporated in Delaware and its principal executive offices are located at 8235 Forsyth Blvd., Suite 400, St. Louis, Missouri 63105. The Company’s common stock trades on the New York Stock Exchange under the ticker symbol “FF.”

9. Defendant Tom McKinlay (“McKinlay”) served as the Company’s Chief Executive Officer (“CEO”) throughout the Class Period.

10. Defendant Rose M. Sparks (“Sparks”) served as the Company’s Chief Financial Officer (“CFO”) throughout the Class Period.

11. Defendants McKinlay and Sparks are collectively referred to herein as the “Individual Defendants.”

12. Each of the Individual Defendants:

- (a) directly participated in the management of the Company;
- (b) was directly involved in the day-to-day operations of the Company at the highest levels;

- (c) was privy to confidential proprietary information concerning the Company and its business and operations;
- (d) was directly or indirectly involved in drafting, producing, reviewing and/or disseminating the false and misleading statements and information alleged herein;
- (e) was directly or indirectly involved in the oversight or implementation of the Company's internal controls;
- (f) was aware of or recklessly disregarded the fact that the false and misleading statements were being issued concerning the Company; and/or
- (g) approved or ratified these statements in violation of the federal securities laws.

13. FutureFuel is liable for the acts of the Individual Defendants and its employees under the doctrine of *respondeat superior* and common law principles of agency because all of the wrongful acts complained of herein were carried out within the scope of their employment.

14. The scienter of the Individual Defendants and other employees and agents of the Company is similarly imputed to the Company under *respondeat superior* and agency principles.

15. FutureFuel and the Individual Defendants are collectively referred to herein as "Defendants."

### **SUBSTANTIVE ALLEGATIONS**

#### **Materially False and Misleading Statements Issued During the Class Period**

16. On August 9, 2023, after market hours, the Company filed with the SEC its quarterly report on Form 10-Q for the period ended June 30, 2023 (the "2Q23 Report"). Attached to the 2Q23 Report were certifications pursuant to the Sarbanes-Oxley Act of 2002 ("SOX")

signed by Defendants McKinlay and Sparks attesting to the accuracy of financial reporting, the disclosure of any material changes to the Company's internal control over financial reporting and the disclosure of all fraud.

17. The 2Q23 Report stated the following regarding the Company's internal controls:

Under the supervision and with the participation of our chief executive officer and our principal financial officer and other senior management personnel, we evaluated the effectiveness of the design and operation of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15(d)-15(e)) under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), as of the end of the period covered by this report. Based on that evaluation, our chief executive officer and our principal financial officer have concluded that these disclosure controls and procedures at June 30, 2023 were effective to ensure that information required to be disclosed in the reports that we file or submit under the Exchange Act is recorded, processed, summarized, and reported within the time periods specified in the SEC's rules and forms.

Management believes that the consolidated financial statements included in this Quarterly Report on Form 10-Q present fairly in all material respects our consolidated financial position, results of operations and cash flows for the period presented.

18. The statement in ¶ 17 was materially false and misleading at the time it was made because the Company lacked effective internal controls.

19. The 2Q23 Report provided the following, in pertinent part, regarding the Company's financials:

**FutureFuel Corp.**  
**Consolidated Statements of Cash Flows**  
(Dollars in thousands)  
(Unaudited)

	Six Months Ended June 30,	
	2023	2022
<b>Cash flows from operating activities</b>		
Net income (loss)	\$ 11,222	\$ (15,502)
Adjustments to reconcile net income to net cash from operating activities:		
Depreciation	5,155	5,276
Amortization of deferred financing costs	49	48
Benefit for deferred income taxes	-	(1,672)
Change in fair value of equity securities	(3,117)	7,339
Change in fair value of derivative instruments	(3,259)	(2,388)
Loss on the sale of investments	2,543	27
Loss on disposal of property and equipment	8	50
Noncash interest expense	17	17
Changes in operating assets and liabilities:		
Accounts receivable	(2,369)	(8,172)
Accounts receivable – related parties	(1)	(20)
Inventory	(40,601)	(4,664)
Income tax receivable	19	(20)
Prepaid expenses	1,706	1,773
Prepaid expenses - related parties	-	(8)
Other assets	1,806	125
Accounts payable	(6,269)	19,171
Accounts payable – related parties	24	326
Accrued expenses and other current liabilities	321	(659)
Accrued expenses and other current liabilities – related parties	(1)	(1)
Deferred revenue	(2,037)	(2,769)
Other noncurrent liabilities	427	(187)
<b>Net cash used in operating activities</b>	<u>(34,357)</u>	<u>(1,910)</u>
<b>Cash flows from investing activities</b>		
Collateralization of derivative instruments	(3,154)	383
Proceeds from the sale of marketable securities	37,701	250
Proceeds from the sale of property and equipment	-	56
Capital expenditures	(3,875)	(1,895)
<b>Net cash provided by (used in) investing activities</b>	<u>30,672</u>	<u>(1,206)</u>
<b>Cash flows from financing activities</b>		
Payment of dividends	(5,251)	(5,251)
Deferred financing costs	(14)	-
<b>Net cash used in financing activities</b>	<u>(5,265)</u>	<u>(5,251)</u>
<b>Net change in cash and cash equivalents</b>	<u>(8,950)</u>	<u>(8,367)</u>
Cash and cash equivalents at beginning of period	175,640	137,521
<b>Cash and cash equivalents at end of period</b>	<u>\$ 166,690</u>	<u>\$ 129,154</u>
Cash paid for income taxes	\$ 20	\$ 276
Noncash investing and financing activities:		
Noncash capital expenditures	\$ 244	\$ 95

The accompanying notes are an integral part of these consolidated financial statements.

20. The financials provided in ¶ 19 were materially false and misleading.
21. On November 9, 2023, the Company filed with the SEC its quarterly report on Form 10-Q for the period ended September 30, 2023 (the “3Q23 Report”). Attached to the 3Q23 Report were certifications pursuant to SOX signed by Defendants McKinlay and Sparks attesting to the accuracy of financial reporting, the disclosure of any material changes to the Company’s internal control over financial reporting and the disclosure of all fraud.
22. The 3Q23 Report stated the following regarding the Company’s internal controls:

Under the supervision and with the participation of our chief executive officer and our principal financial officer and other senior management personnel, we evaluated the effectiveness of the design and operation of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15(d)-15(e)) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), as of the end of the period covered by this report. Based on that evaluation, our chief executive officer and our principal financial officer have concluded that these disclosure controls and procedures at September 30, 2023 were effective to ensure that information required to be disclosed in the reports that we file or submit under the Exchange Act is recorded, processed, summarized, and reported within the time periods specified in the SEC’s rules and forms.

Management believes that the consolidated financial statements included in this Quarterly Report on Form 10-Q present fairly in all material respects our consolidated financial position, results of operations and cash flows for the period presented.

23. The statement in ¶ 22 was materially false and misleading at the time it was made because the Company lacked effective internal controls.

24. The 3Q23 Report provided the following, in pertinent part, regarding the Company’s financials:

**FutureFuel Corp.**  
**Consolidated Statements of Cash Flows**  
(Dollars in thousands)  
(Unaudited)

	Nine Months Ended September	
	2023	2022
<b>Cash flows from operating activities</b>		
Net income	\$ 13,998	\$ 278
Adjustments to reconcile net income to net cash from operating activities:		
Depreciation	7,736	7,850
Amortization of deferred financing costs	75	72
Benefit for deferred income taxes	-	(255)
Change in fair value of equity securities	(3,117)	7,940
Change in fair value of derivative instruments	3,523	(3,053)
Loss on the sale of investments	2,543	15
Stock based compensation	-	46
Loss on disposal of property and equipment	8	60
Noncash interest expense	26	-
Changes in operating assets and liabilities:		
Accounts receivable	(3,295)	5,597
Accounts receivable – related parties	6	47
Inventory	(149)	9,523
Income tax receivable	32	7,759
Prepaid expenses	2,700	2,711
Prepaid expenses - related parties	-	(8)
Other assets	(5,019)	296
Accounts payable	(14,910)	9,257
Accounts payable – related parties	(800)	338
Accrued expenses and other current liabilities	(404)	25
Accrued expenses and other current liabilities – related parties	-	(1)
Deferred revenue	(2,030)	(4,128)
Other noncurrent liabilities	1,553	(242)
<b>Net cash provided by operating activities</b>	<b>2,476</b>	<b>44,127</b>
<b>Cash flows from investing activities</b>		
Collateralization of derivative instruments	2,991	865
Proceeds from the sale of marketable securities	37,701	263
Proceeds from the sale of property and equipment	-	61
Capital expenditures	(4,994)	(3,692)
<b>Net cash provided by (used in) investing activities</b>	<b>35,698</b>	<b>(2,503)</b>
<b>Cash flows from financing activities</b>		
Payment of dividends	(7,877)	(7,877)
Deferred financing costs	(14)	-
<b>Net cash used in financing activities</b>	<b>(7,891)</b>	<b>(7,877)</b>
Net change in cash and cash equivalents	30,283	33,747
Cash and cash equivalents at beginning of period	175,640	137,521
<b>Cash and cash equivalents at end of period</b>	<b>\$ 205,923</b>	<b>\$ 171,268</b>
Cash paid for income taxes	\$ -	\$ 72
Noncash investing and financing activities:		
Noncash capital expenditures	\$ 518	\$ 214

The accompanying notes are an integral part of these consolidated financial statements.

25. The financials provided in ¶ 24 were materially false and misleading.
26. On March 14, 2024, the Company filed with the SEC its annual report on Form 10-K for the period ended December 31, 2023 (the “2023 Annual Report”). Attached to the 2023 Annual Report were certifications pursuant to SOX signed by Defendants McKinlay and Sparks attesting to the accuracy of financial reporting, the disclosure of any material changes to the Company’s internal control over financial reporting and the disclosure of all fraud.



27. The 2023 Annual Report stated the following regarding the Company's internal controls:

Our management is responsible for establishing and maintaining adequate internal control over financial reporting. Our internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Management assessed the effectiveness of our internal control over financial reporting as of December 31, 2023. In making this assessment, management used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) in Internal Control-Integrated Framework (2013). Based on this assessment, management has concluded that, as of December 31, 2023, our internal control over financial reporting is effective based on those criteria.

The effectiveness of our internal control over financial reporting as of December 31, 2023 has been audited by RSM US LLP, a registered public accounting firm, which expressed an unqualified opinion as stated in their report, a copy of which is included below.

28. The statement in ¶ 27 was materially false and misleading at the time it was made because the Company lacked effective internal controls.

29. The 2023 Annual Report included the following financial figures:

**FutureFuel Corp.**  
**Consolidated Statements of Cash Flows**  
**For the Years Ended December 31, 2023, 2022 and 2021**  
(Dollars in thousands)

	2023	
<b>Cash flows from operating activities</b>		
Net income	\$ 37,382	\$
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation	10,348	
Amortization of deferred financing costs	101	
Benefit for deferred income taxes	-	
Change in fair value of equity securities	(3,117)	
Change in fair value of derivative instruments	(1,878)	
Loss (gain) on the sale of investments	2,543	
Stock based compensation	-	
Loss on disposal of property, plant, and equipment	29	
Impairment of intangible asset	-	
Noncash interest expense	34	
Changes in operating assets and liabilities:		
Accounts receivable	(2,208)	
Accounts receivable – related parties	5	
Inventory	(6,217)	
Income tax receivable	19	
Prepaid expenses	(652)	
Prepaid expenses – related party	-	
Other assets	3,523	
Accounts payable	(6,493)	
Accounts payable – related parties	(7,757)	
Accrued expenses and other current liabilities	(719)	
Accrued expenses and other current liabilities – related parties	(1)	
Deferred revenue	(2,418)	
Other noncurrent liabilities	1,461	
Net cash provided by operating activities	23,985	
<b>Cash flows from investing activities</b>		
Collateralization of derivative instruments	(1,343)	
Purchase of marketable securities	-	
Proceeds from the sale of marketable securities	37,701	
Proceeds from the sale of property, plant, and equipment	-	
Proceeds from the sale of intangible assets	-	
Capital expenditures	(6,022)	
Net cash provided by (used in) investing activities	30,336	
<b>Cash flows from financing activities</b>		
Minimum tax withholding on stock options exercised	-	
Deferred financing costs	(14)	
Proceeds from the issuance of stock	-	
Payment of dividends	(10,503)	
Net cash used in financing activities	(10,517)	
Net change in cash and cash equivalents	43,804	
Cash and cash equivalents at beginning of period	175,640	
Cash and cash equivalents at end of period	\$ 219,444	\$
Cash paid for interest	\$ -	\$
Cash paid for income taxes	\$ 20	\$
<b>Noncash investing and financing activities:</b>		
Noncash capital expenditures included in accounts payable	\$ 333	\$
Noncash operating leases	\$ -	\$
Dividends payable	\$ 10,503	\$

The accompanying notes are an integral part of these financial statements.

30. The financials provided in ¶ 29 were materially false and misleading.

31. The statements contained in ¶¶ 17, 19, 22, 24, 27 and 29 were materially false and/or misleading because they misrepresented and failed to disclose the following adverse facts pertaining to the Company's business, operations, and prospects, which were known to Defendants or recklessly disregarded by them. Specifically, Defendants made false and/or misleading statements and/or failed to disclose that: (1) FutureFuel did not have adequate internal controls; (2) FutureFuel's financial statements were misstated; and (3) as a result, Defendants' statements about its business, operations, and prospects, were materially false and misleading and/or lacked a reasonable basis at all times.

### **THE TRUTH BEGINS TO EMERGE**

32. On May 10, 2024, the Company filed with the SEC a Current Report on Form 8-K (the "May 10 Current Report"). It revealed the following:

FutureFuel Corp. (the "Company") has identified *a correction required to be made to its historical consolidated statements of cash flows for the six months ended June 30, 2023, nine months ended September 30, 2023 and year ended December 31, 2023*. The correction relates solely to the reported amount of "Other assets" and the resulting total amount of "Net Cash Flows From Operating Activities" and the reported amount of "Collateralization of derivative instruments" and the resulting total amount of "Net Cash Flows from Investing Activities" in the respective consolidated statements of cash flows for the six months ended June 30, 2023, nine months ended September 30, 2023 and year ended December 31, 2023 (collectively, the "Correction"). The Correction does not impact the Company's overall cash position, its consolidated balance sheets, its consolidated statements of operations and comprehensive income (loss), or its consolidated statements of stockholders' equity as of or for the periods ended June 30, 2023, September 30, 2023 or December 31, 2023.

\* \* \*

On May 8, 2024, management and the audit committee of the board of directors of the Company concluded that, as a result of the Correction and in accordance with, Staff Accounting Bulletin No. 99, "Materiality," the consolidated statements of cash flows included in the Company's previously issued unaudited financial statements in the Quarterly Reports on Form 10-Q for the periods ended June 30, 2023, and September 30, 2023, and the previously issued audited Consolidated Statement of Cash Flows on Form 10-K for the year ended December 31, 2023, were materially misstated and should no longer be relied upon due to the Correction. In addition, any Company communications or presentations relating to the Correction should no longer be relied upon.

The Company will report the restatement in an amendment to each of the Quarterly Reports on Form 10-Q for the quarters ended June 30, 2023, and September 30, 2023 (the “Form 10-Q/As”), and to the Annual Report on Form 10-K for the year ended December 31, 2023 (the “Form 10-K/A”). The financial information that has been previously filed or otherwise reported for these periods with respect to the Correction will be superseded by the information to be included in the consolidated financial statements in the Form 10-Q/As and Form 10-K/A.

*In addition, the Company’s management has concluded that, as a result of the Correction, a material weakness existed in the Company’s internal control over financial reporting as of June 30, 2023, September 30, 2023, and December 31, 2023, and that, because of this material weakness, the Company’s disclosure controls and procedures were not effective as of June 30, 2023, September 30, 2023, and December 31, 2023.* The Company’s remediation plan with respect to such material weakness will be described in more detail in the Company’s Form 10-Q/As and Form 10-K/A.

The Company’s management and audit committee of the board of directors discussed the matters disclosed in this Item 4.02 with its independent registered public accounting firm, RSM US LLP.

(Emphasis added).

33. The May 10 Current Report then included a summary of the impact on its financials:

		Six Months Ended June 30, 2023		
		As Reported	Adjustment	As Restated
<b>Cash flows from operating activities:</b>				
Other assets	\$	1,806	\$ (6,308)	\$ (4,502)
Net cash used in operating activities	\$	(34,357)	\$ (6,308)	\$ (40,665)
<b>Cash flows from investing activities:</b>				
Collateralization of derivative instruments	\$	(3,154)	\$ 6,308	\$ 3,154
Net cash provided by (used in) investing activities	\$	30,672	\$ 6,308	\$ 36,980
		Nine Months Ended September 30, 2023		
		As Reported	Adjustment	As Restated
<b>Cash flows from operating activities:</b>				
Other assets	\$	(5,019)	\$ 5,982	\$ 963
Net cash provided by operating activities	\$	2,476	\$ 5,982	\$ 8,458
<b>Cash flows from investing activities:</b>				
Collateralization of derivative instruments	\$	2,991	\$ (5,982)	\$ (2,991)
Net cash provided by (used in) investing activities	\$	35,698	\$ (5,982)	\$ 29,716
		For the Year Ended December 31, 2023		
		As Reported	Adjustment	As Restated
<b>Cash flows from operating activities:</b>				
Other assets	\$	3,523	\$ (2,686)	\$ 837
Net cash provided by operating activities	\$	23,985	\$ (2,686)	\$ 21,299
<b>Cash flows from investing activities:</b>				
Collateralization of derivative instruments	\$	(1,343)	\$ 2,686	\$ 1,343
Net cash provided by (used in) investing activities	\$	30,336	\$ 2,686	\$ 33,022

34. On May 10, 2024, the Company filed with the SEC its amended 2Q23 and 3Q23 Reports on Form 10-Q/A, and its amended 2023 Annual Report on Form 10-K/A.

35. The amended 2Q23 Report contained the following restated financial figures:

<b>FutureFuel Corp.</b> <b>Consolidated Statements of Cash Flows</b> <b>(Dollars in thousands)</b> <b>(Unaudited)</b>		
	<b>Six Months Ended June 30,</b> <b>2023</b> <b>(Restated)</b>	
		<b>2022</b>
<b>Cash flows from operating activities</b>		
Net income (loss)	\$ 11,222	\$ (15,502)
Adjustments to reconcile net income to net cash from operating activities:		
Depreciation	5,155	5,276
Amortization of deferred financing costs	49	48
Benefit for deferred income taxes	-	(1,672)
Change in fair value of equity securities	(3,117)	7,339
Change in fair value of derivative instruments	(3,259)	(2,388)
Loss on the sale of investments	2,543	27
Loss on disposal of property and equipment	8	50
Noncash interest expense	17	17
Changes in operating assets and liabilities:		
Accounts receivable	(2,369)	(8,172)
Accounts receivable – related parties	(1)	(20)
Inventory	(40,601)	(4,664)
Income tax receivable	19	(20)
Prepaid expenses	1,706	1,773
Prepaid expenses - related parties	-	(8)
Other assets	(4,502)	125
Accounts payable	(6,269)	19,171
Accounts payable – related parties	24	326
Accrued expenses and other current liabilities	321	(659)
Accrued expenses and other current liabilities – related parties	(1)	(1)
Deferred revenue	(2,037)	(2,769)
Other noncurrent liabilities	427	(187)
<b>Net cash used in operating activities</b>	<b>(40,665)</b>	<b>(1,910)</b>
<b>Cash flows from investing activities</b>		
Collateralization of derivative instruments	3,154	383
Proceeds from the sale of marketable securities	37,701	250
Proceeds from the sale of property and equipment	-	56
Capital expenditures	(3,875)	(1,895)
<b>Net cash provided by (used in) investing activities</b>	<b>36,980</b>	<b>(1,206)</b>
<b>Cash flows from financing activities</b>		
Payment of dividends	(5,251)	(5,251)
Deferred financing costs	(14)	-
<b>Net cash used in financing activities</b>	<b>(5,265)</b>	<b>(5,251)</b>
Net change in cash and cash equivalents	(8,950)	(8,367)
Cash and cash equivalents at beginning of period	175,640	137,521
<b>Cash and cash equivalents at end of period</b>	<b>\$ 166,690</b>	<b>\$ 129,154</b>

36. The amended 3Q23 Report contained the following restated financial figures:

**FutureFuel Corp.**  
**Consolidated Statements of Cash Flows**  
(Dollars in thousands)  
(Unaudited)

	Nine Months Ended September 30,	
	2023 (Restated)	2022
<b>Cash flows from operating activities</b>		
Net income	\$ 13,998	\$ 278
Adjustments to reconcile net income to net cash from operating activities:		
Depreciation	7,736	7,850
Amortization of deferred financing costs	75	72
Benefit for deferred income taxes	-	(255)
Change in fair value of equity securities	(3,117)	7,940
Change in fair value of derivative instruments	3,523	(3,053)
Loss on the sale of investments	2,543	15
Stock based compensation	-	46
Loss on disposal of property and equipment	8	60
Noncash interest expense	26	-
Changes in operating assets and liabilities:		
Accounts receivable	(3,295)	5,597
Accounts receivable – related parties	6	47
Inventory	(149)	9,523
Income tax receivable	32	7,759
Prepaid expenses	2,700	2,711
Prepaid expenses - related parties	-	(8)
Other assets	963	296
Accounts payable	(14,910)	9,257
Accounts payable – related parties	(800)	338
Accrued expenses and other current liabilities	(404)	25
Accrued expenses and other current liabilities – related parties	-	(1)
Deferred revenue	(2,030)	(4,128)
Other noncurrent liabilities	1,553	(242)
<b>Net cash provided by operating activities</b>	<u>8,458</u>	<u>44,127</u>
<b>Cash flows from investing activities</b>		
Collateralization of derivative instruments	(2,991)	865
Proceeds from the sale of marketable securities	37,701	263
Proceeds from the sale of property and equipment	-	61
Capital expenditures	(4,994)	(3,692)
<b>Net cash provided by (used in) investing activities</b>	<u>29,716</u>	<u>(2,503)</u>
<b>Cash flows from financing activities</b>		
Payment of dividends	(7,877)	(7,877)
Deferred financing costs	(14)	-
<b>Net cash used in financing activities</b>	<u>(7,891)</u>	<u>(7,877)</u>
Net change in cash and cash equivalents	30,283	33,747
Cash and cash equivalents at beginning of period	175,640	137,521
<b>Cash and cash equivalents at end of period</b>	<u>\$ 205,923</u>	<u>\$ 171,268</u>
Cash paid for income taxes	\$ -	\$ 72
Noncash investing and financing activities:		
Noncash capital expenditures	\$ 518	\$ 214



37. The amended 2023 Annual Report contained the following disclosure regarding the Company's internal controls:

***We have identified a material weakness in our internal control over financial reporting as of December 31, 2023, September 30, 2023 and June 30, 2023, and continuing as of the date hereof which was correctly presented but had not been fully remediated, that resulted in a restatement of certain of our statements of cash flows. If we are not able to remediate this material weakness or otherwise fail to maintain effective internal control over financial reporting, we might not be able to report our financial results accurately or prevent fraud; in that case, our stockholders could lose confidence in our financial reporting, which would harm our business and could negatively impact the value of our stock.***

Effective internal controls are necessary for us to provide reliable financial reports and prevent fraud. The process of maintaining our internal controls may be expensive, and time consuming, and may require significant attention from management. As disclosed in this Amendment No. 1, we have identified a material weakness in our internal control over financial reporting, which existed as of December 31, 2023, September 30, 2023 and June 30, 2023. This error was the result of review controls of the cash flow statement which did not operate as designed and as such resulted in these errors. The Company has determined that the error did not have an impact on the Company's overall cash position, its consolidated balance sheets, its consolidated statements of income and comprehensive income, or its consolidated statement of changes in stockholders' equity as previously reported.

This material weakness resulted in the errors described in the Explanatory Note and Background of the Restatement. We have commenced efforts to remediate the material weakness as described in more detail in Part II, Item 9A. Controls and Procedures in this Amendment No. 1. However, this material weakness will not be considered remediated until the controls operate for a sufficient period of time and management has concluded, through testing, that these controls operate effectively. Our efforts to remediate this material weakness may be time consuming and costly. We cannot provide assurance that such efforts will ultimately have the intended effect. If we fail to remediate the existing material weakness or we or our independent registered public accounting firm discover additional material weaknesses, the value of our stock and our business could be harmed. As a result of the material weakness and the restatement of certain of our statements of cash flows, we may face litigation or regulatory investigations that could have a material adverse effect on the Company and its business and results of operations.

Further, because of its inherent limitations, internal control over financial reporting may not prevent or detect fraud or misstatements. Failure to implement required new or improved controls, or difficulties encountered in their implementation, could harm our results of operations or cause us to fail to meet our reporting obligations.



38. The amended 2023 Annual Report contained the following restated financial figures:

#### **RESTATEMENT**

The Company identified a correction required to be made to its consolidated statements of cash flows for the year ended December 31, 2023. The correction relates solely to the reported amount of “Other assets” and the resulting total amount of “Net Cash Flows From Operating Activities” and the reported amount of “Collateralization of derivative instruments” and the resulting total amount of “Net Cash Flows from Investing Activities” in the consolidated statement of cash flows for the year ended December 31, 2023. The correction does not impact the Company’s overall cash position, its consolidated balance sheets, its consolidated statements of income and comprehensive income, or its consolidated statements of changes in stockholders’ equity as of or for the year ended December 31, 2023.

A summary of the impact on the consolidated statement of cash flows is as follows:

	<b>For the Year Ended December 31, 2023</b>		
	<b>As Originally Reported</b>	<b>Adjustment</b>	<b>As Restated</b>
<b>Cash flows from operating activities:</b>			
Other assets	\$ 3,523	\$ (2,686)	\$ 837
Net cash provided by operating activities	\$ 23,985	\$ (2,686)	\$ 21,299
<b>Cash flows from investing activities:</b>			
Collateralization of derivative instruments	\$ (1,343)	\$ 2,686	\$ 1,343
Net cash provided by (used in) investing activities	\$ 30,336	\$ 2,686	\$ 33,022

39. On this news, the price of FutureFuel stock declined by \$0.09, or 1.6%, to close at \$5.50 on May 10, 2024. It then fell a further \$0.47, or 8.54%, to close at \$5.03 on May 13, 2024. It declined by a further \$0.06, or 1.19%, to close at \$4.97 on May 14, 2024.

40. As a result of Defendants’ wrongful acts and omissions, and the precipitous decline in the market value of the Company’s common shares, Plaintiff and the other Class members have suffered significant losses and damages.

#### **PLAINTIFF’S CLASS ACTION ALLEGATIONS**

41. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a class consisting of all persons other than defendants who acquired FutureFuel securities publicly traded on the NYSE during the Class Period, and who were damaged thereby (the “Class”). Excluded from the Class are Defendants, the officers

and directors of the Company, members of the Individual Defendants' immediate families and their legal representatives, heirs, successors or assigns and any entity in which Defendants have or had a controlling interest.

42. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, the Company's securities were actively traded on the NYSE. While the exact number of Class members is unknown to Plaintiff at this time and can be ascertained only through appropriate discovery, Plaintiff believes that there are hundreds, if not thousands of members in the proposed Class.

43. Plaintiff's claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendants' wrongful conduct in violation of federal law that is complained of herein.

44. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class and securities litigation. Plaintiff has no interests antagonistic to or in conflict with those of the Class.

45. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

- whether the Exchange Act was violated by Defendants' acts as alleged herein;
- whether statements made by Defendants to the investing public during the Class Period misrepresented material facts about the business and financial condition of the Company;

- whether Defendants' public statements to the investing public during the Class Period omitted material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading;
- whether the Defendants caused the Company to issue false and misleading filings during the Class Period;
- whether Defendants acted knowingly or recklessly in issuing false filings;
- whether the prices of the Company's securities during the Class Period were artificially inflated because of the Defendants' conduct complained of herein; and
- whether the members of the Class have sustained damages and, if so, what is the proper measure of damages.

46. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

47. Plaintiff will rely, in part, upon the presumption of reliance established by the fraud-on-the-market doctrine in that:

- the Company's securities met the requirements for listing, and were listed and actively traded on the NYSE, an efficient market;
- as a public issuer, the Company filed public reports;
- the Company communicated with public investors via established market communication mechanisms, including through the regular dissemination of press

releases via major newswire services and through other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services;

- the Company's securities were liquid and traded with moderate to heavy volume during the Class Period; and
- the Company was followed by a number of securities analysts employed by major brokerage firms who wrote reports that were widely distributed and publicly available.

48. Based on the foregoing, the market for the Company securities promptly digested current information regarding the Company from all publicly available sources and reflected such information in the prices of the common units, and Plaintiff and the members of the Class are entitled to a presumption of reliance upon the integrity of the market.

49. Alternatively, Plaintiff and the members of the Class are entitled to the presumption of reliance established by the Supreme Court in *Affiliated Ute Citizens of the State of Utah v. United States*, 406 U.S. 128 (1972), as Defendants omitted material information in their Class Period statements in violation of a duty to disclose such information as detailed above.

**COUNT I**  
**For Violations of Section 10(b) And Rule 10b-5 Promulgated Thereunder**  
**Against All Defendants**

50. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

51. This Count asserted against Defendants is based upon Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder by the SEC.

52. During the Class Period, Defendants, individually and in concert, directly or indirectly, disseminated or approved the false statements specified above, which they knew or deliberately disregarded were misleading in that they contained misrepresentations and failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

53. Defendants violated §10(b) of the 1934 Act and Rule 10b-5 in that they:

- employed devices, schemes and artifices to defraud;
- made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- engaged in acts, practices and a course of business that operated as a fraud or deceit upon plaintiff and others similarly situated in connection with their purchases of the Company's securities during the Class Period.

54. Defendants acted with scienter in that they knew that the public documents and statements issued or disseminated in the name of the Company were materially false and misleading; knew that such statements or documents would be issued or disseminated to the investing public; and knowingly and substantially participated, or acquiesced in the issuance or dissemination of such statements or documents as primary violations of the securities laws. These defendants by virtue of their receipt of information reflecting the true facts of the Company, their control over, and/or receipt and/or modification of the Company's allegedly materially misleading statements, and/or their associations with the Company which made them privy to confidential proprietary information concerning the Company, participated in the fraudulent scheme alleged herein.

55. Individual Defendants, who are or were senior executives and/or directors of the Company, had actual knowledge of the material omissions and/or the falsity of the material statements set forth above, and intended to deceive Plaintiff and the other members of the Class, or, in the alternative, acted with reckless disregard for the truth when they failed to ascertain and disclose the true facts in the statements made by them or other Company's personnel to members of the investing public, including Plaintiff and the Class.

56. As a result of the foregoing, the market price of the Company's securities was artificially inflated during the Class Period. In ignorance of the falsity of Defendants' statements, Plaintiff and the other members of the Class relied on the statements described above and/or the integrity of the market price of the Company's securities during the Class Period in purchasing the Company's securities at prices that were artificially inflated as a result of Defendants' false and misleading statements.

57. Had Plaintiff and the other members of the Class been aware that the market price of the Company's securities had been artificially and falsely inflated by Defendants' misleading statements and by the material adverse information which Defendants did not disclose, they would not have purchased the Company's securities at the artificially inflated prices that they did, or at all.

58. As a result of the wrongful conduct alleged herein, Plaintiff and other members of the Class have suffered damages in an amount to be established at trial.

59. By reason of the foregoing, Defendants have violated Section 10(b) of the 1934 Act and Rule 10b-5 promulgated thereunder and are liable to the plaintiff and the other members of the Class for substantial damages which they suffered in connection with their purchase of the Company's securities during the Class Period.

**COUNT II**  
**Violations of Section 20(a) of the Exchange Act**  
**Against the Individual Defendants**

60. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

61. During the Class Period, the Individual Defendants participated in the operation and management of the Company, and conducted and participated, directly and indirectly, in the conduct of the Company's business affairs. Because of their senior positions, they knew the adverse non-public information about the Company's business practices.

62. As officers of a public business, the Individual Defendants had a duty to disseminate accurate and truthful information with respect to the Company's financial condition and results of operations, and to correct promptly any public statements issued by the Company which had become materially false or misleading.

63. Because of their positions of control and authority as senior executives and/or directors, the Individual Defendants were able to, and did, control the contents of the various reports, press releases and public filings which the Company disseminated in the marketplace during the Class Period concerning the Company's results of operations. Throughout the Class Period, the Individual Defendants exercised their power and authority to cause the Company to engage in the wrongful acts complained of herein. The Individual Defendants therefore, were "controlling persons" of the Company within the meaning of Section 20(a) of the Exchange Act. In this capacity, they participated in the unlawful conduct alleged which artificially inflated the market price of Company securities.

64. By reason of the above conduct, the Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act for the violations committed by the Company.

**PRAYER FOR RELIEF**

**WHEREFORE**, plaintiff, on behalf of himself and the Class, prays for judgment and relief as follows:

(a) declaring this action to be a proper class action, designating plaintiff as Lead Plaintiff and certifying plaintiff as a class representative under Rule 23 of the Federal Rules of Civil Procedure and designating plaintiff's counsel as Lead Counsel;

(b) awarding damages in favor of plaintiff and the other Class members against all defendants, jointly and severally, together with interest thereon;

(c) awarding plaintiff and the Class reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

(d) awarding plaintiff and other members of the Class such other and further relief as the Court may deem just and proper.

**JURY TRIAL DEMANDED**

Plaintiff hereby demands a trial by jury.



/s/ J. Christopher Wehrle  
James Christopher Wehrle, #45592MO  
**WEHRLE LAW LLC**  
2601 S. Hanley Rd.  
St. Louis, Missouri 63144  
(314) 272-4113  
(314) 272-4107 Facsimile  
[chris@wehrlelaw.com](mailto:chris@wehrlelaw.com)

**THE ROSEN LAW FIRM, P.A.**  
Phillip Kim, Esq.  
Laurence M. Rosen, Esq.  
275 Madison Avenue, 40<sup>th</sup> Floor  
New York, New York 10016  
Telephone: (212) 686-1060  
Fax: (212) 202-3827  
Email: philkim@rosenlegal.com  
Email: lrosen@rosenlegal.com

*Counsel for Plaintiff*